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LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44315
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2015-15681
)	
ISMIEL EMANNUAL MEEDS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Meeds failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of his unified sentence of five years, with two years fixed, imposed upon his guilty plea to unlawful possession of a firearm?

Meeds Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Meeds pled guilty to unlawful possession of a firearm and the district court imposed a unified sentence of five years, with two years fixed. (43962 R., pp.29-31.) Meeds filed a notice of appeal timely from the judgment of conviction. (43962 R., pp.33-

35.) On August 4, 2016, the Idaho Court of Appeals affirmed Meeds' conviction and sentence. State v. Meeds, 2016 Unpublished Opinion No. 628, Docket No. 43962 (Idaho App., August 4, 2016). While the appeal was pending, Meeds filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (44315 R., pp.6-7, 14-15.) Meeds filed a notice of appeal timely from the district court's order denying his Rule 35 motion. (44315 R., pp.16-18.)

"Mindful of the fact that no new or additional information was presented, which is a prerequisite for appellate review," Meeds nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his claim that the goals of sentencing "may still be accomplished by reducing the sentence in this case." (Appellant's brief, pp.2-3 (citing 44315 R., p.9).) Meeds has failed to establish an abuse of discretion.

In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion "does not function as an appeal of a sentence." The Court noted that where a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, "[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Absent the presentation of new evidence, "[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence." Id. Accord State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008).

On appeal, Meeds acknowledges that he failed to provide any new or additional information in support of his Rule 35 motion. (Appellant's brief, p.3.) Because Meeds presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion for a reduction of sentence.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Meeds' Rule 35 motion for a reduction of sentence.

DATED this 26th day of October, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of October, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General